

MARK McLEAD SAUNDERS III

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CENTINELA STATE PRISON

PO BOX 931 IMPERIAL, CA. 92251

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FILED

MAY 12 2008

2008 MAY 14 AM 11:20

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIARJM  
DEPUTYUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARK McLEAD SAUNDERS III

CASE No. 08CV0757 L(AJB)

PETITIONER

V.

JIM ALMAGER

WARDEN

RESPONDENT

AND

THE ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA  
ADDITIONAL RESPONDENT

PETITIONERS REQUEST  
FOR THE COURT TO STAY  
PROCEEDINGS IN PETITIONERS  
28 USC § 2254 CASE AND  
HOLD CASE IN ABEYANCE  
UNTIL PETITIONERS CURRENTLY  
PENDING STATE HABEAS  
CORPUS PETITION IS DECIDED  
BY THE CALIFORNIA STATE COURTS

PETITIONER MARK McLEAD SAUNDERS III HERBY  
REQUESTS THE COURT TO STAY PROCEEDINGS  
IN PETITIONER'S 28 USC § 2254 CASE. CASE  
No. \_\_\_\_\_ BECAUSE PETITIONER IS  
UNDERGOING AN "EXHAUSTION ROUND" OF  
STATE HABEAS CORPUS PROCEEDINGS IN ORDER  
TO LITIGATE CLAIMS OF VIOLATIONS OF PETITIONERS  
CONSTITUTIONAL RIGHTS (SEE ATTACHED  
DECLARATION OF PETITIONER, STATING GOOD  
CAUSE FOR ISSUANCE OF THE INSTANT REQUESTED  
STAY / ABEYANCE MOTION) PETITIONER HERBY  
CITES THE LEGAL AUTHORITY CITED BY THE  
9<sup>TH</sup> CIRCUIT COURT IN FORD V HUBBARD

OR

330 F 3D 1086: KELLY V. SMALL 315 F3D 1063 AND PETIT AND THE US SUPREME COURT CASE OF RHINES V. WEBER 544 US 269 (2005) TO SUPPORT THIS MOTION. PETITIONER ARGUES THAT HE HAS MET THE 2 CRITERIAS FOR OBTAINING THE REQUESTED STAY IN RHINES V. WEBER:

1) ARGUE MERIT & CLAIMS: CLAIMS OF CONSTITUTIONAL VIOLATIONS NOT ADDRESSED BY COUNSEL ON DIRECT APPEAL. PETITIONER'S CASE INVOLVES A 50 YEARS TO LIFE SENTENCE FOR VC23152(A) NORMAL SENTENCE RANK 16, 2, 3 AND HS 11530 (A) WITH A NORMAL SENTENCE RANK 90 DAYS TO A YEAR.

PETITIONER CLAIMS THAT THE ISSUES RAISED IN THE PETITION OF HABEAS CORPUS NOW BEING HEARD IN THE STATE COURT ARE VALID AND REASONABLE AND VIOLATE THE RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION (SPECIFICALLY THE 5<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup>, AND 14<sup>TH</sup> AMMENDMENTS) APPELLATE COUNSEL FAILED TO RAISE THESE ISSUES ON DIRECT APPEAL, THEREFORE IT HAVE ADDRESSED THE FOLLOWING ISSUES ON A WRIT OF HABEAS CORPUS WHICH PETITIONER ASKS THAT THE COURT HEAR IN THE FURTHERANCE OF JUSTICE, ON THE FOLLOWING GROUNDS.

## Ground #1 "INEFFECTIVE ASSISTANCE OF COUNSEL"

PETITIONER'S TRIAL COUNSEL WAS GROSSLY INEFFECTIVE AT EVERY ASPECT OF THE DEFENSE. THE FAILURE TO DEFEND WAS TANTAMOUNT TO A GUILTY PLEA BY THE PETITIONER THIS VIOLATING THE RIGHTS GUARANTEED BY THE 5<sup>th</sup> AND 6<sup>th</sup> AND 14<sup>th</sup> AMENDMENTS (SEE STRICKLAND V WASHINGTON 466 US 668 AND ALSO US V CRONIC 466 US 648)

## Ground #2 "INAPPROPRIATE APPLICATION OF THE 3 STRIKES LAW"

PETITIONER'S 3 STRIKES AROSE FROM A "SINGLE" UNINTENTIONAL ACT, WHICH HAPPENED 20 YRS AGO THIS RESULTED IN A SENTENCE THAT IS UNCONSTITUTIONALLY EXCESSIVE BECAUSE IT EXCEEDS THE MAXIMUM SENTENCE INTENDED THEREBY IN VIOLATION OF THE 5<sup>th</sup> AND 8<sup>th</sup> AMENDMENTS OF THE UNITED STATES CONSTITUTION (SEE RUTLEDGE V US 517 US 292 (1996))

## Ground #3 "DOUBLE JEOPARDY VIOLATION"

PETITIONER WAS SUBJECT TO MULTIPLE JEOPARDY BY VIRTUE OF THE ASSESSMENT OF THE 3 STRIKES LAW FOR THE COMMISSION OF ONE OFFENSE, AND THE SUBSEQUENT APPLICATION OF ALL THREE STRIKES TO

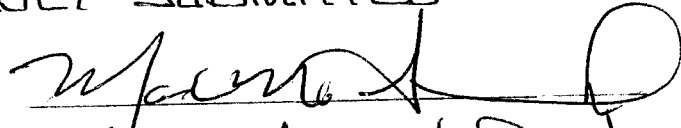
ENHANCE THE SENTENCE AND THE  
CURRENT OFFENSE IN VIOLATION  
OF THE DOUBLE JEOPARDY PROHIBITION  
IN THE FIFTH AMENDMENT OF THE  
UNITED STATES CONSTITUTION (SEE  
BRADY V. OHIO 432 US 161 (1977))  
GROUND # 4 "INEFFECTIVE ASSISTANCE  
OF APPELATE COUNSEL"

PETITIONER'S APPELATE COUNSEL WAS  
INEFFECTIVE FOR FAILING TO RAISE THE  
SUBSTANTIAL CLAIMS RAISED IN THIS  
PETITION. THIS RESULTED IN A VIOLATION  
OF THE RIGHT TO COUNSEL GUARANTEED  
BY THE SIXTH AMENDMENT OF THE  
UNITED STATES CONSTITUTION. SPECIFICALLY  
APPELATE COUNSEL FAILED TO RAISE THE  
ISSUES OF INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL, IMPROPER APPLICATION OF  
THE 3 STRIKES LAW, AND THE DOUBLE  
JEOPARDY VIOLATION (SEE SMITH V  
ROBBINS, 528 US 259 (2000))

2) PETITIONER WAS UNAWARE THAT THIS MOTION WAS TO BE FILED WITH THE PETITIONER'S FEDERAL APPEAL FILED LAST WEEK. AND ASKS THAT THE COURT RECOGNIZE THAT I HAVE DONE MY BEST TO FILE "ALL DOCUMENTS" IN MY APPEAL IN A "TIMELY MANNER." I BEGAN MY RESEARCH VIA US MAIL, BECAUSE I WAS UNABLE TO GO TO THE LAW LIBRARY AT CALIPATRIA BECAUSE OF CONTINUOUS LOCKDOWNS. I WHEN WAS TRANSFERRED TO CENTINELA AND HELD IN RECEIPTAL WITH NO LAW LIBRARY ACCESS. PETITIONER STILL MAINTAINS THAT THE WRIT OF HABEAS CORPUS NOW BEING HEARD IN STATE COURT WAS FILED IN A TIMELY MANNER AND WAS MAILED OUT ON FEB. 29 2008. PETITIONER ALSO MADE THE COURT AWARE OF THIS WRIT OF HABEAS CORPUS IN DIRECT APPEAL MAILED OUT ON APRIL 21<sup>ST</sup> 2008. PETITIONER HAS NOT ONLY FILED ALL DOCUMENTATION IN A TIMELY MANNER, BUT ALSO ASKS THAT THE COURT CONSIDER THE FACT THAT THE CASE IN APPEAL INVOLVES

A 50 YEARS TO LIFE SENTENCE AND PETITIONER CONTENTS THAT ALL PAPERWORK WAS FILED WITHIN THE 1 YEAR DEADLINE FROM PETITIONER'S DENIAL OF DIRECT APPEAL AT THE STATE LEVEL.

I MARK McLEND SAUNDERS III  
RESPECTIVELY REQUEST THE REGISTERED  
STAY TO BE GRANTED IN PRU SE  
RESPECTIVELY SUBMITTED



MARK McLEAND SAUNDERS III  
PETITIONER

IN PRU SE



## DECLARATION OF PETITIONER

I MARK McLEAN SAUNDERS HEARBY DECLARE:  
I AM THE PETITIONER IN WITHIN  
CASE. MY ADDRESS IS:

MARK McLEAN SAUNDERS  
FO2744 D3-227  
CENTINELA STATE PRISON  
PO BOX 931 IMPERIAL, CA  
92251

I HAVE MADE THIS DECLARATION IN  
SUPPORT OF THE WITHIN MOTION FOR  
STAY / ABSTINANCE. I DEMONSTRATE MY  
STANDING (SEE RHINES V. WEBER 544 US  
269 (2005)) TO SUPPORT THIS MOTION:

- 1) THE GROUNDS IN MY STATE HABEAS  
CORPUS ARE CONSTITUTIONALLY VALID  
IN AS MUCH AS CLAIMS MADE VIOLATE  
FIFTH, SIXTH, EIGHTH, AND FOURTEENTH  
AMMENDMENTS OF THE UNITED STATES  
CONSTITUTION.

GROUNDS 1 "INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL"

GROUNDS 2 "INAPPROPRIATE APPLICATION OF  
THREE STRIKES LAW"

GROUND 3 "DOUBLE JEOPARDY VIOLATION"

GROUND 4 "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL"

GILSE ISSUES WERE NOT RAISED ON MY DIRECT APPEAL BY APPELLATE COUNSEL (GROUNDS 1, 2, AND 3) PETITIONER IS SERVING A 25 TO LIFE SENTENCE FOR VC 23152(A) NORMAL SENTENCE RANGE 16, 2, 3 AND A SECOND 25 TO LIFE SENTENCE FOR HS 11550(A) NORMAL SENTENCE RANGE 90 DAYS TO A YEAR FOR A TOTAL SENTENCE OF 50 YEARS TO LIFE. PETITIONER CONTENTS THAT THIS SENTENCE IS UNJUST. PETITIONER ALSO CONTENTS THAT THE INTENT OF THE THREE STRIKES WAS NOT TO CALL THREE STRIKES FROM A "SINGLE" NON-INTENTIONAL ACT. AND THEREFORE AN ERROR.

APPELLATE COUNSEL FAILED TO RAISE THIS ISSUE, AS WELL AS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND DIRECT APPEAL.



2) PETITIONER HAS DONE EVERYTHING POSSIBLE TO TRY TO MEET ALL DEADLINES WHILE AT THE SAME TIME OVERCUMING MANY OBSTACLES IN ATTEMPTING TO DO SO:

1) PETITIONER WAS UNAWARE THAT THIS DOCUMENT SHOULD HAVE BEEN FILED TOGETHER WITH PETITIONER'S FEDERAL APPEAL

2) PETITIONER DID TRY TO MAKE THE COURT AWARE OF COLLATERAL ATTACK NOW PENDING IN THE STATE COURT BY ATTACHING EXTRA PAGES IN THE GROUNDS SECTION OF THE FEDERAL PETITION AND LABELING THEM AS CURRENTLY BEING EXHAUSTED AT THE STATE LEVEL.

3) PETITIONER HAD LIMITED LAW LIBRARY ACCESS. PETITIONER WAS FIRST INCARCERATED AT CALIPATRIA WHICH ALLOWED NO MOVEMENT AND NO LAW LIBRARY ACCESS TO ANY INMATES, EXCEPT

FOR DEADLINES. PETITIONER WHEN BEGAN LEGAL RESEARCH VIA U.S. MAIL. PETITIONER WAS ABLE TO ACCESS THE LAW LIBRARY THE LAST PART OF 2007. PETITIONER WAS TRANSFERRED TO CENTINELA PRISON WHICH FURTHER SLOWED LEGAL RESEARCH AND LIBRARY ACCESS. PETITIONER FILED STATE HABEAS WITH THE STATE (MAILED 2/29/08) ONE OF THE ISSUES FILED IN PETITIONER'S WRIT OF HABEAS CORPUS IS "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" WHICH PETITIONER COULD NOT RAISE UNTIL PETITIONER'S DIRECT APPEAL WAS FINISHED BEING HEARD.

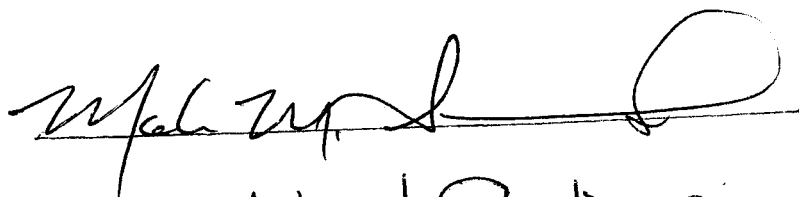
4) "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" APPELLATE COUNSEL FAILED TO RAISE IMPORTANT ISSUES ON PETITIONER'S DIRECT APPEAL. FAILURE TO RAISE THESE ISSUES ON DIRECT APPEAL DEPRIVED THE PETITIONER

OF THE OPPORTUNITY TO HAVE ADJUDICATION OF THE CLAIM AT WHAT STAGE OF POST CONVICTION PROCEEDINGS. AT THE VERY LEAST, THE CLAIMS SHOULD HAVE BEEN RAISED TO PRESERVE VIABILITY AS A CLAIM ON FEDERAL HABEAS CORPUS. APPELLATE COUNSEL FAILED TO ENGAGE IN ADEQUATE CONSULTATION WITH THE PETITIONER TO THE EXTENT THAT SUCH FAILURE RESULTED IN A DIRECT APPEAL DEVOID OF THOSE SUBSTANTIAL CONSTITUTIONAL CLAIMS RAISED ON THE PETITIONER'S WRIT OF HABEAS CORPUS NOW PENDING IN THE STATE COURTS. PETITIONER BELIEVES THAT IF APPELLATE COUNSEL HAD PROVIDED EFFECTIVE CONSULTATION, SHE WOULD HAVE BEEN AWARE OF THE IMPORTANCE OF THESE ISSUES TO THE PETITIONER'S CASE AND WOULD HAVE RAISED THEM ON

DIRECT APPEAL. AT THE VERY LEAST, ADEQUATE CONSULTATION WOULD HAVE PROVIDED APPELLATE COUNSEL WITH THE OPPORTUNITY TO APPRISE THE PETITIONER OF HER STRATEGY THAT EXCLUDED THESE CLAIMS FROM THE DIRECT APPEAL, AFFORDING PETITIONER THE OPPORTUNITY TO OBJECT TO THE EXCLUSION. PETITIONER RECEIVED A LETTER FROM PETITIONER'S APPELLATE ATTORNEY THE LAST WEEK OF MAY 2007 ADVISING PETITIONER TO PURSUE AN AVENUE IN THE WAY OF A WRIT OF HABEAS CORPUS (SEE ATTACHED LETTER EXHIBIT A) SHE MAILED MY TRANSCRIPTS IN JUNE OF 2007. PETITIONER CLAIMS THAT HE HAS DONE HIS BEST TO RESEARCH, ADDRESS, AND FILE THESE ISSUES IN A TIMELY

MANNER. THEREFORE THE PETITIONER,  
MARK McLEAN SAUNDERS RESPECTFULLY  
REQUESTS THE COURT TO GRANT THE  
REQUESTED STAY IN THE FURTHERANCE  
OF JUSTICE, SO THAT PETITIONER MAY  
EXHAUST STATE REMEDIES ON THE  
CURRENT ISSUES NOW PENDING IN  
THE STATE COURTS THEREFORE PRESERVING  
THE OPPORTUNITY TO HAVE THESE  
ISSUES HEARD ON FEDERAL HABEAS  
CORPUS.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'Mark McLean Saunders', written over a horizontal line.

MARK McLEAN SAUNDERS

IN PRU SE

**Marianne Harguindeguy Cox**  
**Attorney at Law**  
**3453 Ingraham Street, PMB 236**  
**San Diego, California 92109**  
**(619) 233-0290**

May 24, 2007

Mark McLean Saunders # F02744  
Calipatria State Prison  
Post Office Box 5002  
Calipatria, California 92233

RE: People v. Mark McLean Saunders  
Court of Appeal No. D047541

Dear Mr. Saunders:

As you can see from the document I am sending you, the California Supreme Court denied our petition for review. You may want to take this to the Federal level, so I went to the Federal Court to get you the necessary paper work to pursue that avenue in the way of a Petition for Writ of Habeas Corpus. I have also sent you a copy of a Declaration in Support of Request to Proceed In Forma Pauperis and Certificate. This is an old document and you should obtain a more current copy from your correctional facility. The Federal Court did not provide me a current form as far as the Declaration since that should also be available to you at the prison.

All the information to file in Federal Court you have in State briefings I have provided you. I am not a panel attorney for the Federal Court. If the Court finds merit in your Petition, they will appoint an attorney for you. Please let me know if you need any of those filings re-sent to you..

Please instruct me what to do with your transcripts. I can hold them for you or send them to the prison. You can contact me at the above address.

Sincerely,

A handwritten signature in black ink that reads "M-Harguindeguy Cox". The signature is written in a cursive, somewhat stylized font.

Marianne Harguindeguy Cox  
State Bar #115755

MHC/ljl

encl.

EXHIBIT A



Short Title:

Court Case No:

## Proof of Service By Mail

I am over the age of 18 and a party/not a party (mark one out) to the cause.

I am a resident of or employed in the county where the mailing occurred. My

residence or business address is (specify): CENTINELA STATE PRISON - (I.D. #F02744)  
2302 BROWN ROAD  
P.O. BOX 931  
IMPERIAL, CA. 92251

I served the attached:

MOTION FOR STAY / ABEYANCE

By enclosing true copies in a sealed envelope addressed to each person

whose name and address is given below and depositing the envelopes in the

United States mail with the postage fully prepaid. in the County of Imperial.

Date of deposit: 5/7, 2008

### NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

U.S. COURT HOUSE  
SOUTHERN DISTRICT OF CALIFORNIA  
880 FRONT ST. STE. 4290  
SAN DIEGO, CA.  
92101-8900

CALIFORNIA ATTORNEY GENERAL  
1100 W. A ST. STE. 1100  
SAN DIEGO, CA.  
92101-3702

I certify under penalty of perjury that the foregoing is true and correct.

DATE:

5/7/08

MARK MCLEAN SAUNDERS  
(TYPE OR PRINT NAME)

[Signature]  
(SIGNATURE OF DECLARANT)